IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/10/2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.368 of 2003

Karuppan alias Karuppusamy ... Appellant /
Accused.

-Vs-

The State, rep. By the
Inspector of Police,
Avinasipalayam Police Station, ... Respondent /
Coimbatore District. Complainant

This Criminal Appeal arises out of the judgment dated 27.01.2003 made in S.C.No.301 of 2002 on the file of Sessions Judge / Magalir Neethimandram, Coimbatore Division.

!For Appellant : Mr. R.Sivaprakasam

^For Respondent : Mr.V.M.R.Rajendran,
Additional Public Prosecutor.

:J U D G M E N T

Appellant is the Accused in S.C.No.301 of 2002 on the file of Sessions Judge / Magalir Neethimandram, Coimbatore Division. By the Judgment dated 27.01.2003, the Presiding Officer of Magalir Neethimandram convicted the Appellant / Accused for the offence under S.376 I.P.C. and sentenced him to undergo Rigorous Imprisonment for Seven years and imposed fine of Rs.25,000/-; in default to undergo Simple Imprisonment for a further period of one year. Out of the fine amount of Rs.2 5,000/-, a sum of Rs.15,000/- was ordered payable to Victim / P.W.1 - Manjula as compensation under S.357 Crl.P.C.

2. Case of prosecution is that P.W.1 - Manjula is unmarried and is residing with her parents in Goundapalayam. At the time of occurrence, she came to her Elder Sister's house at Rangapalayam as a guest. On the date of occurrence - 29.03.1999 - 5.00 p.m., when P.W.1 was attending the calls of nature in Pallam, the accused came from her behind, pulled her hand and forcibly removed her dresses and pushed her down. The accused removing his Trouser, laid on P.W.1 and had Sexual Intercourse with her thereby committed

Rape on her.

3. P.W.2 - Saraswathi and her mother P.W.6 - Jayakodi, who also went to Pallam for attending the nature's call saw P.W.1 and the accused without any dresses and the accused embracing P.W.1. When P.W.1 went back, the accused ran back after her saying that some how he would do the same. P.W.1 returned back to her Sister's house and informed her Sister and Brother-in-law about the occurrence. The family members deliberated upon the same whether to inform the Police or not.

4. Registration of case and Investigation. P.W.1 accompanied by her Sister and Brother-in-law went to Avinasipalayam Police Station on 30.03.1999 - 2.00 p.m. She has lodged the Complaint (Ex.P.1). On the basis of Ex.P.1 - Complaint, P.W.8 - Sub Inspector of Police registered the case in Avinasipalayam Police Station Crime No.100 of 1999 under S.376 I.P.C. under Ex.P.8 - First Information Report. The Blood Stained clothes of P.W.1 - Manjula (M.Os.1 to 3) were seized under Form - 95.

5. P.W.8 - S.I. of Police had taken up the initial investigation. He has inspected the scene of occurrence in Rangapalayam Village in the presence of Witnesses Palani and Mahali. Ex.P.9 is the Observation Mahazar and Ex.P.10 is the Rough Plan regarding the scene of occurrence. On the same day, i.e., on 30.03.1999 - 6.00 p.m., accused Karuppan was arrested in Tiruppur Karungangadu Bus Stop. The clothes of the accused - M.Os.4 and 5 were also seized under Form - 95. Seized Material objects were sent for Chemical Analysis.

6. Victim P.W.1 - Manjula was sent to Tiruppur Government Hospital for Medical Examination. P.W.3 - Dr.Chandira has examined P.W.1. On the person of P.W.1, she has noted :-

Abrasion over Right side of right Knee and left Knee;

Two thorn marks on the right side of the Upper back;

Few nail marks on the face.

On examination of the private parts of P.W.1, it was noted that " Breast normal; External Genitalia normal; Hymen not intact; Vaginal admitted one finger easily ". Ex.P.2 is the Accident Register regarding P.W.1. P.W.1 - Manjula was Radiologically examined by Dr.Sarojini (P.W.4). Upon such Radiological Examination, P.W.4 opined that P.W.1 has completed 19 years. Ex.P.3 is the Age Certificate of P.W.1.

7. The accused was also sent for Medical Examination to know about his potency. P.W.5 - Dr.Velu examined him. He has noted that the Semen of the accused was normal. P.W.5 found that Clinically there is nothing to suggest that the accused is impotent. To that effect, P.W.5 issued Ex.P.4 - Potency Certificate.

8. P.W.9 - Inspector of Police had taken up further investigation and examined the witnesses. P.W.10 - Inspector of Police had

taken up further investigation. He has examined the Doctors and recorded their Statements. After completing all formalities of investigation, he filed the Charge Sheet against the Accused under S.376 I.P.C.

9. In the trial Court, to substantiate the Charge against the accused, prosecution has examined P.Ws.1 to 10. Exs.P.1 to P.10 were marked. M.Os.1 to 5 were remanded to Court. The accused was questioned under S.313 Crl.P.C. about the incriminating evidence and circumstances. Denying all of them, the accused has stated that a false case has been foisted against him.

10. In consideration of the evidence, the learned Sessions Judge found P.W.1 as a trustworthy witness. The learned trial Judge also found that the evidence of P.W.1 that she being subjected to Sexual Violence and Rape being committed on her is amply corroborated by the Medical Evidence apart from the evidence of P.Ws.2 and 6. On the delay aspect, the learned Sessions Judge held that in cases of Rape, reluctance on the part of the Victim's family would only be normal and that the delay would not seriously affect the prosecution case. Finding that the accused had committed Rape upon P.W.1, the trial Court convicted the Appellant / Accused under S.376 I.P.C. and sentenced him to undergo Imprisonment as aforesaid in Para (1).

11. Aggrieved over the conviction, the Appellant / Accused has preferred this appeal. Laying emphasis upon the absence of External Injuries on the private parts of P.W.1 and the accused, the learned counsel for the Appellant / Accused submitted that the evidence of P.W.1 is incompatible with the prosecution story. Contending that a false case has been foisted against the accused due to the Pipe dispute between the family of the accused and the family of the Sister of P.W.1, the learned counsel has interalia raised the following contentions:-

(i) that there was Thorny bushes around the place; absence of any injuries on the person of P.W.1 shows the non-resistance by P.W.1 thereby indicating that she is a Consenting Party to the occurrence;

(ii) for the occurrence on 29.03.1999 - 5.00 p.m., Ex.P.1 - Complaint was given only on 30.03.1999 - 2.00 p.m., and that no acceptable explanation is forthcoming for the delay.

Placing reliance upon 1998 (3) Crimes 151 (SC) - Kuldeep K.Mahato v. State of Bihar, it is submitted that the evidence of P.W.1 suffers from contradictions and infirmities and the trial Court erred in basing the conviction on the evidence of P.W.1.

12. Submitting that the evidence of P.W.1 is creditworthy which is amply strengthened by Medical Evidence and the oral testimony of P. Ws.2 and 6, Mr.V.M.R.Rajendran, learned Additional Public Prosecutor has submitted that the trial Court has rightly accepted the version of P.W.1. It is further submitted that in cases of Rape, where reputation of the family is involved the delay in preferring the Complaint would not in any way affect the prosecution case. The learned Additional Public Prosecutor has drawn the

attention of the Court to Ex.P.2 - Accident Register, where P.W.1 is shown to have sustained Thorn Marks and also few Nail Marks on the face, which is due to the forcible Sexual Intercourse committed on her. Submitting that no importance could be attached to the infirmities and contradictions and that broad probabilities are only to be considered, learned Additional Public Prosecutor has relied upon 2003 (8) SBR 143 - Visveswaran v. State Rep. By S.D.M.

13. Upon consideration of the submissions by both sides, evidence and materials on record and the Judgment of the trial Court, the point that arises for consideration is:- whether the Appellant / Accused is proved to have committed Rape on the victim girl - P.W.1 and whether the learned Sessions Judge was right in convicting the Appellant / Accused under S.376 I.P.C. and whether the conviction warrants any interference ?

14. The main evidence is that of Prosecutrix - P.W.1 (Manjula). P.W.1, aged 21 years, unmarried is residing in Goundapalayam along with her parents. She came to her Sister's house at Rangampalayam as a guest. P.W.1 has cogently narrated the Rape committed on her by the accused. On 29.03.1999 - 5.00 p.m., when she was going to attend the nature's call, the Appellant / Accused followed her and pushed her down and removing her dresses had forcible Sexual Intercourse with her. Evidence of Prosecutrix / P.W.1 is well strengthened by the evidence of P.Ws.2 and 6 and the Medical Evidence.

15. Let us firstly refer to the Medical Evidence which shows that P.W.1 - Manjula had been subjected to forcible Sexual Intercourse. Upon Medical Examination of P.W.1, P.W.3 - Dr.Chandra has noted Abrasion over right side of right Knee and left Knee. Two thorn marks were seen on the right side of the upper back. Few nail marks were seen on the face. Hymen not intact. Vagina admitted one finger easily. For an unmarried woman " Hymen not intact and Vagina admitted one finger easily " are the clinching pieces of evidence lending assurance to the evidence of P.W.1 that there had been forcible Sexual Intercourse on her.

16. On examination of P.W.1, P.W.3 - Dr.Chandra has noted that Breast was normal; External Genitalia Normal; Hymen not intact and Vagina admitted one finger easily. The main point urged onbehalf of the Appellant / Accused is that the absence of external injuries on the private parts of P.W.1 - External genitalia being normal shows that she would have been a Consenting Party. Learned counsel for the Appellant / Accused has submitted that P.W.1 has not raised any alarm nor offered resistance and such conduct coupled with absence of injuries on the private parts would clearly prove that P.W.1 was a Consenting Party. It is not as if there had been total absence of injuries as contended by the accused. As noted earlier, there had been thorn marks on the right side of Upper back apart from Abrasion on the right Knee and left Knee and few Nail Marks on the face. The absence of injuries on the private parts of P.W.1 would only show that she could not much resist the accused, who was aged about 38-40 years. But the absence of injuries by itself is not sufficient to hold that P.W.1 was a Consenting Party. May be being frightened

or for fear of being assaulted, P.W.1 could not offer much resistance. Merely because External Genitalia was found to be normal, it would be too much to accept the contention that there had been consent on the part of P.W.1.

17. From the evidence of P.W.1 - Manjula and the facts and circumstances of the case, it comes to be known that she is not normally a resident of Rangapalayam; she is the resident of Goundapalayam. She only came as a guest to Rangapalayam. P.W.1 may not have had much prior acquaintance with the accused except knowing him. When that being so, there is no reason for an unmarried woman like P.W.1 to falsely implicate the accused in a Rape case. The suggestion of the defence that a false case has been foisted against him due to Pipe dispute between the family of the accused and the family of Sister of P.W.1 is not supported by any materials on record.

18. Apart from the Medical Evidence, evidence of P.W.1 is strengthened by the evidence of P.Ws.2 and 6. P.W.2 - Saraswathi is residing in Sevanthapalayam. Her mother P.W.6 - Jayakodi is residing at Rangapalayam. At the time of occurrence, P.W.2 went to her mother's house at Rangapalayam. At the time of occurrence, P.Ws.2 and 6 also went to Pallam for attending the nature's call. Near the Thorny Bushes, they saw the accused forcibly embracing P.W.1 and that their clothes were found aside. P.W.1 pushed down the accused and when she left the place, the accused stated that he would perpetrate the same. (The commission of Sexual Intercourse). P.Ws.2 and 6 have consistently spoken about the occurrence. The learned Sessions Judge found that the evidence of P.Ws.2 and 6 is cogent and corroborative of the evidence of P.W.1. No substantive reason is forthcoming to take a different view.

19. Admittedly, P.Ws.2 and 6 have not gone to the rescue of P.W.1 - Manjula. Such conduct of P.Ws.2 and 6 are being unnatural. The learned counsel for the Appellant / Accused submitted that having found the act of Rape being committed on P.W.1 by the accused, the normal conduct of P.Ws.2 and 6 would have been to rush to the rescue of P.W.1 and chastise the accused. In her Cross-examination, P.W.6 has admitted that in such situation, any woman would try to rescue the victim girl. But at the time of occurrence P.Ws.2 and 6 saw them lying together. P.W.1 had gone away with bleeding on her mouth. The accused followed her saying " ahh; vd;d TwpdhYk; ehd; mijj; jhd; bra;ntd; "(Vide evidence of P.W.6). Under such circumstances, P.Ws.2 and 6 might have found uncomfortable to intervene or perhaps being frightened by the accused, had not gone to the rescue of P.W.1. Evidence of P. Ws.2 and 6 cannot be disbelieved on the ground that they have not immediately gone to the rescue of P.W.1.

20. The occurrence was on 29.03.1999 - 5.00 p.m. Ex.P.1 - Complaint was lodged in Avinasipalayam Police Station on 30.03.1999 - 2.00 p.m. , on the basis of which case was registered in Avinasipalayam Police Station Crime No.100 of 1999. The main contention urged is the delay in filing the Complaint and it is submitted that the family of P.W.1 were gaining time for deliberation and to make up false accusation against the accused. As noted earlier, an unmarried woman, like P.W.1 has no reason to point the

accusation finger against the accused that he committed Rape on her. Unlike in other cases, in Rape cases, delay in lodging the First Information Report cannot be urged as a point for doubting the prosecution case and discarding the same on the ground of delay. The mere delay in filing the First Information Report is not a ground to doubt the evidence of P.W.1. More than one reason could be pointed out for the delay in lodging the First Information Report. P.W.1 was aged 21 years and unmarried. If any police complaint is to be lodged making allegations of Rape being committed on her, her future would be at stake. That apart, she has to face the taunting of the Villagers that she had been subjected to Sexual Violence while she visited her sister's house as a guest. In that circumstance, quite naturally, there was reluctance on the part of the family of P.W.1 to report the same to the Police. Evidence of P.W.1 and the prosecution case cannot be doubted merely on the ground of delay. The learned Sessions Judge has rightly found that the delay in lodging the Complaint would not affect the prosecution case and the same is to be endorsed with.

21. P.W.1 has stated that Ex.P.1 - Complaint was written by the Police themselves; but Ex.P.1 is the Written Complaint, on the basis of which First Information Report was registered by P.W.8. Pointing out this contradiction, the learned counsel for the Appellant / Accused has submitted that when Ex.P.1 - Complaint and the prosecution case are surrounded by infirmities, benefit of doubt is to be given to the accused. In support of his contention, learned counsel has relied upon 1998 (3) Crimes 187 - Suresh N. Bhusare & Ors. v. State of Maharashtra. P.W.1 being a rustic woman, may not have been in the know of things to distinguish before the Court as to the Written Complaint and Recording of her Statement by the Police. That contradiction would not in any way undermine the core of her evidence. As rightly submitted by the learned Additional Public Prosecutor, in cases of this nature, the broad probabilities of the case and the evidence are to be considered. Minor contradictions cannot undermine the core of the prosecution case.

22. Blood Stained Clothes of P.W.1, viz., M.O.1 - Saree, M.O.2 - Jacket and M.O.3 - In-skirt were sent for Chemical Analysis. During examination, Human Blood was detected. But no semen was detected on the above clothes of P.W.1. Absence of Semen and Stains does not throw doubt on the prosecution case. Perhaps at the time of committing Rape, there was only Penetration with no Ejection. It is to be noted that the accused was medically examined and that there is nothing to suggest that he is impotent. Under such circumstances, absence of Semen and Stains on the clothes of P.W.1 does not seriously affect the credibility of P.W.1.

23. The learned Sessions Judge of Magalir Neethimandram has rightly held the trial in Camera. In consideration of the broad probability of the case, the learned Sessions Judge has rightly accepted the evidence of P.W.1, which is amply corroborated by the Medical Evidence and the evidence of P.Ws.2 to 6. There is no apparent error in the appreciation of evidence. The reasonings for conviction are well balanced based upon the evidence on record and the conviction is to be sustained.

24. For the conviction under S.376 I.P.C., the learned Sessions Judge has directed the Appellant / Accused to undergo Rigorous Imprisonment for Seven years. The trial Court has also imposed fine of Rs.25 ,000/-, out of which an amount of Rs.15,000/- is ordered to be paid as compensation to the victim girl - P.W.1 under S.357 Crl.P.C. The sentence of imprisonment and the quantum of fine imposed cannot be said to be excessive or unreasonable warranting interference and the same is to be maintained.

25. Therefore, the Judgment of the Sessions Judge / Magalir Neethimandram, Coimbatore Division in S.C.No.301 of 2002 (dated 27.01.2003) convicting the Appellant / Accused under S.376 I.P.C. with sentence of Rigorous Imprisonment of seven years and the quantum of fine are confirmed and this appeal is dismissed.

Index: Yes

Internet: Yes

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To

1. The Sessions Judge,
Mahalir Neethimandram,
Coimbatore.

2. The Principal Sessions Judge,
Coimbatore.

3. The Superintendent of Police,
Central Prison, Coimbatore.

4. The Inspector of Police,
Avinasipalayam Police Station,
Coimbatore.

5. The Public Prosecutor,
High Court, Madras.

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